



**THE ATTORNEY GENERAL
OF TEXAS**

December 14, 1988

**JIM MATTOX
ATTORNEY GENERAL**

Mr. H. Edwin Crow, P.E.
Acting Executive Director
Texas State Board of Registration
for Professional Engineers
P. O. Drawer 18329
Austin, Texas 78760

LO-88-135

Dear Mr. Crow:

Because of the tremendous increase in the volume of requests for opinions and open records decisions, we are responding to your request with the enclosed Letter Opinion or Open Records Ruling. A Letter Opinion or Open Records Ruling has the same force and effect as a formal Attorney General Opinion or Open Records Decision, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent Letter Opinion or Open Records Ruling, a formal Attorney General Opinion or Open Records Decision, or a decision of a court of record.

Very truly yours,

A handwritten signature in cursive script that reads "Jim Mattox".

J I M M A T T O X
Attorney General of Texas

JAM/bc
Enclosure



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Dear Mr. Crow:

You ask about the constitutionality of a temporary \$110 increase in the annual registration fee for professional engineers. Your question is prompted by a written protest from a registrant alleging that the tax is unconstitutional.

In 1987 the legislature enacted a bill imposing a "temporary increase in fees" upon members of several professions. Acts 1987, 70th Leg., 2d C.S., ch. 5, art. 9, at 32. Section 8 of that legislation amended section 13A of article 3271a, V.T.C.S., the Texas Engineering Practice Act, to read in part as follows:

(a) Each of the following fees imposed by or under another section of this Act that first becomes due on or after [September 1, 1987], but before August 31, 1989, is increased by \$110:

- (1) registration fee;
- (2) annual renewal fee; and
- (3) reciprocal registration fee.

(b) Of each fee increase collected, \$27.50 shall be deposited to the credit of the Foundation School Fund and \$82.50 shall be deposited to the credit of the General Revenue Fund. This subsection applies to the disposition of each fee increase regardless

of any other provision of law providing for a different disposition of funds.

The caption to the bill imposing the fee increase states that the act relates to "raising revenue to support state and local government." Acts 1987, 70th Leg., 2d C.S., ch. 5, at 9. The increase in fees can therefore be classified as an occupation tax. Conlen Grain and Mercantile, Inc. v. Texas Grain Sorghum Producers Board, 519 S.W.2d 620 (Tex. 1975). The legislature is authorized to impose occupation taxes by article VIII, section 1, of the Texas Constitution, which provides in part:

(c) The Legislature may provide for the taxation of intangible property and may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State . . . except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax.

Article VIII, section 2, requires that all occupation taxes be "equal and uniform upon the same class of subjects within the limits of the authority levying the tax." Article VII, section 3, further requires that one-fourth of the revenue derived from state occupation taxes "be set apart annually for the benefit of the public free schools." In short, the power of the legislature to levy occupation taxes is limited by the constitutional provisions set out above in three ways: (1) the tax must be equal and uniform within the class taxed; (2) one-quarter of the revenue raised must be set aside for the public schools; and (3) the tax cannot be imposed on persons engaged in agricultural or mechanical pursuits.¹

1. The registrant who has objected to the tax on professional engineers raises a number of issues. In essence, he has traced objections raised in H. Rouw Co. v. Texas Citrus Commission, 247 S.W.2d 231, 233 (Tex. 1952). Several of the objections simply make no sense in the context of the tax imposed on engineers. For example, the registrant states that the tax is unconstitutional because the legislature failed to set aside one-fourth of the revenue for the public free schools. See Tex. Const. art. VII, § 3. However, the legislature did in fact set aside
(Footnote Continued)

By requiring that the tax be "equal and uniform," the constitution requires only that the tax be assessed equally among members of an occupation between whom there is no real difference. Texas Co. v. Stephens, 103 S.W. 481, 485 (Tex. 1907). The legislature may classify and impose different taxes upon people who generally pursue the same occupation, so long as there is some reasonable basis for the classification. Id. "This is the rule in applying both the state and federal Constitutions, and it has been so often stated as to render unnecessary further discussion of it." Id. Article 3271a sets a tax rate that is the same for all professional engineers subject to the registration requirement; there is no classification system within the class of subjects taxed, and all are taxed in the same amount.² Therefore, the tax complies with the requirement that occupation taxes be "equal and uniform."

Subsection (b) of article 3271a, section 13A, sets aside \$27.50 -- one-quarter of the amount to be collected -- for the foundation school fund. This fulfills the requirement of article VII, section 3, of the constitution. See Tax Code § 191.122 (requiring one-fourth of miscellaneous occupation taxes to be "deposited to the credit of the foundation school fund and three-fourths to the credit of the general revenue fund").

(Footnote Continued)

one-fourth of the revenue from the tax on engineers for the public free schools. V.T.C.S. art. 3271a, § 13A(b). Other objections are simply too vague to permit a response. For example, the registrant asserts that the tax violates state and federal antitrust laws, but he offers no explanation of how this is so. Consequently, rather than addressing each of the issues the registrant lists, we will address the issues on which the constitutionality of an occupation tax turns.

2. Section 20 of the Texas Engineering Practice Act exempts several groups from the registration process and, therefore, from the tax. The Texas Supreme Court has said: "Indirectly, if not directly, the question of exemptions is involved in every act levying an occupation tax." Hurt v. Cooper, 110 S.W.2d 896, 903. The courts will not invalidate exemptions that are based on any reasonable, non-discriminatory distinction. See id. at 903-05; see also Attorney General Opinion JM-913 (1988) (upholding constitutionality of temporary occupation tax imposed on attorneys).

Article 3271a regulates only registered professional engineers and engineers-in-training. Id. §§ 11-20. Persons who might be called "engineers" but who are in fact engaged in mechanical pursuits are exempted from the tax by section 20 of the statute. Section 20 provides:

The following persons shall be exempt from the registration provisions of this Act, provided that such persons are not directly or indirectly represented or held out to the public to be legally qualified to engage in the practice of engineering:

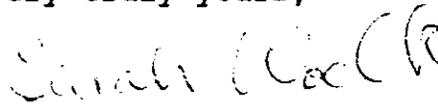
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(e) A person doing the actual work of installing, operating, repairing, or servicing locomotive or stationary engines, steam boilers, Diesel engines, internal combustion engines, refrigeration compressors and systems, hoisting engines, electrical engines, air conditioning equipment and systems, or mechanical and electrical, electronic or communications equipment and apparatus

The legislation therefore complies with the constitutional requirement that the tax may not be imposed on persons engaged in agricultural or mechanical pursuits.

In summary, we find no basis for concluding that the \$110 increase in registration fees imposed on professional engineers is unconstitutional.

Very truly yours,


Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

SW/RY/bc

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ID# 4626